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SEP 30 2009

OFFICE OF PETITIONS

In re Application of :
Gantier, et al. : LETTER REGARDING PATENT
Application No. 10/658,834 : TERM ADJUSTMENT
Filed: September 8, 2003 :
Attorney Docket No. 120239
00005/922

This letter is in response to the "LETTER REGARDING PATENT TERM ADJUSTMENT AT ALLOWANCE PURSUANT TO COMMENT 43 OF THE FINAL RULE," filed July 17, 2009. Pursuant to applicants' duty of good faith and candor to the Office, applicants request that the determination of patent term adjustment under 35 U.S.C. 154(b) be reviewed for accuracy.

The request for review of the determination of patent term adjustment is granted to the extent indicated herein.

The Office has updated the PALM and PAIR screens to reflect that the Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is forty-nine (49) days. A copy of the updated PALM screen, showing the corrected determination, is enclosed.

On July 9, 2009, a Determination of Patent Term Adjustment under 35 U.S.C. 154(b) was mailed indicating that the patent term adjustment to date was 91 days. On July 17, 2009, applicants submitted the instant comment. Applicants disclose that applicants believe that the patent term adjustment indicated in the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) mailed July 9, 2009, may be longer than appropriate. Specifically, applicants state:

Please review these PTA calculations with attention to the *Supplemental Response* filed December 1, 2006, after the *Response to Election* filed October 20, 2006, regarding Applicant delays, along with the subsequent mailing of the Non-Final Office action on April 4, 2007 for Office delays.

Excerpt from "Letter regarding Patent Term Adjustment at Allowance Pursuant to Comment 43 of the Final Rule", filed July 17, 2009, p. 1.

Pursuant to 37 CFR 1.704(c)(8),

(c) Circumstances that constitute a failure of the applicant to engage in reasonable efforts to conclude processing or examination of an application also include the following circumstances, which will result in the following reduction of the period of adjustment set forth in § 1.703 to the extent that the periods are not overlapping:

(8) Submission of a supplemental reply or other paper, other than a supplemental reply or other paper expressly requested by the examiner, after a reply has been filed, in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date the initial reply was filed and ending on the date the supplemental reply or other such paper was filed.

A review of the application file record reveals that on April 20, 2006, a restriction requirement was mailed to which applicants filed a response on October 20, 2006. On December 1, 2006, applicants filed a supplemental response to the restriction requirement. Pursuant to 37 CFR 1.704(c)(8), it is appropriate to enter a reduction to the patent term adjustment of 42 days beginning from the day after the date the initial reply was filed, October 21, 2006, and ending on the date the supplemental reply was filed December 1, 2006. Accordingly, the period of reduction to the patent term adjustment of 42 days for applicant delay pursuant to 37 CFR 1.704(c)(8) will be entered.

The period of adjustment of 43 days for Office delay entered for the mailing of a non-final Office action on April 4, 2007, four months and 43 days after a response to the restriction requirement was filed on October 20, 2006, has been reviewed and is determined to be appropriate. See 37 CFR 1.704(b).

In view thereof, the correct patent term adjustment at the time of the mailing of the Notice of Allowance is **forty-nine (49) days** (502 days of Office delay - 453 days of applicant delay).

As this letter was submitted as an advisement to the Office of an error in applicants' favor, the Office will not assess the \$200.00 fee as set forth in 37 CFR 1.18(e). The Office thanks applicants for their good faith and candor in bringing this to the attention of the Office.

Applicants are reminded that any delays by the Office pursuant to 37 CFR §§ 1.702(a)(4) and 1.702(b) and any applicant delays under 37 CFR § 1.704(c)(10) will be calculated at the time of the issuance of the patent and applicants will be notified in the Issue Notification letter that is mailed to applicants approximately three weeks prior to issuance.

The Office of Data Management has been advised of this decision. This matter is being referred to the Office of Data Management for issuance of the patent.

Telephone inquiries regarding this matter should be directed to Kenya A. McLaughlin, Petitions Attorney, at (571) 272-3222.

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of updated PAIR screen

Day : Wednesday

PALM INTRANET

Date: 9/30/2009

Time: 09:51:58

PTA Calculations for Application: 10/658834

Application Filing Date:	09/08/2003	PTO Delay (PTO):	502
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	411
Post-Issue Petitions:	0	Total PTA (days):	49
PTO Delay Adjustment:	-42		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
174	09/30/2009	ADJUSTMENT OF PTA CALCULATION BY PTO		42	
145	07/09/2009	MAIL NOTICE OF ALLOWANCE			
144	07/06/2009	ISSUE REVISION COMPLETED			
143	07/06/2009	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
142	07/02/2009	ALLOWED CASE RETURNED TO THE EXAMINER FOR CLERICAL PROCESSING			
141	07/02/2009	DOCUMENT VERIFICATION			
140	07/02/2009	EXAMINER'S AMENDMENT COMMUNICATION			
139	07/02/2009	NOTICE OF ALLOWABILITY			
129	04/27/2009	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
128	04/27/2009	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
127	05/13/2009	DATE FORWARDED TO EXAMINER			
126	04/27/2009	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
125	05/13/2009	DATE FORWARDED TO EXAMINER			
124	04/27/2009	REQUEST FOR CONTINUED EXAMINATION (RCE)		73	120
123	05/13/2009	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			
122	04/27/2009	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
121	04/27/2009	WORKFLOW - REQUEST FOR RCE - BEGIN			
120	11/13/2008	MAIL FINAL REJECTION (PTOL - 326)			
119	11/10/2008	FINAL REJECTION			
118	06/26/2008	INFORMATION DISCLOSURE STATEMENT			

		CONSIDERED			
117	10/14/2008	CRF IS GOOD TECHNICALLY / ENTERED INTO DATABASE			
116	09/06/2008	DATE FORWARDED TO EXAMINER			
115	08/22/2008	RESPONSE AFTER NON-FINAL ACTION		57	109
114	08/12/2008	CRF IS FLAWED TECHNICALLY / NOT ENTERED INTO DATABASE			
113	08/11/2008	MAIL NOTICE OF INFORMAL OR NON-RESPONSIVE AMENDMENT			
112	06/26/2008	REFERENCE CAPTURE ON IDS			
111	06/26/2008	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
110	08/09/2008	DATE FORWARDED TO EXAMINER			
109.1	06/26/2008	INFORMAL OR NON-RESPONSIVE AMENDMENT AFTER EXAMINER ACTION			
109	06/26/2008	RESPONSE AFTER NON-FINAL ACTION		92	104
108	06/26/2008	REQUEST FOR EXTENSION OF TIME - GRANTED			
107	06/26/2008	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
106	05/29/2008	CHANGE IN POWER OF ATTORNEY (MAY INCLUDE ASSOCIATE POA)			
105	05/20/2008	CORRESPONDENCE ADDRESS CHANGE			
104	12/26/2007	MAIL NON-FINAL REJECTION			
103	12/21/2007	NON-FINAL REJECTION			
99	10/04/2007	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
98	10/09/2007	NEW OR ADDITIONAL DRAWING FILED			
97	10/09/2007	AFFIDAVIT(S) (RULE 131 OR 132) OR EXHIBIT(S) RECEIVED			
96	10/18/2007	DATE FORWARDED TO EXAMINER			
95	10/09/2007	RESPONSE AFTER NON-FINAL ACTION		97	91
94	10/09/2007	REQUEST FOR EXTENSION OF TIME - GRANTED			
93	10/04/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
92	10/04/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
91	04/04/2007	MAIL NON-FINAL REJECTION	43		69
90	04/02/2007	NON-FINAL REJECTION			
		INFORMATION DISCLOSURE STATEMENT			

89	10/20/2006	CONSIDERED			
88	09/26/2006	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
87	07/12/2006	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
86	01/04/2006	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
85	08/31/2005	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
84	01/20/2005	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
83	01/04/2005	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
82	11/09/2004	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
81	01/14/2004	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
80	01/09/2004	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
79	02/28/2007	CASE DOCKETED TO EXAMINER IN GAU			
78	02/01/2007	CHANGE IN POWER OF ATTORNEY (MAY INCLUDE ASSOCIATE POA)			
76	12/20/2006	DATE FORWARDED TO EXAMINER			
75	12/01/2006	SUPPLEMENTAL RESPONSE			
73	10/20/2006	REFERENCE CAPTURE ON IDS			
72.7	10/20/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
72	10/20/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
71	10/20/2006	NEW OR ADDITIONAL DRAWING FILED			
70	10/31/2006	DATE FORWARDED TO EXAMINER			
69	10/20/2006	RESPONSE TO ELECTION / RESTRICTION FILED		92	65
68.7	09/26/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
68	09/26/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
67	07/12/2006	REFERENCE CAPTURE ON IDS			
66.7	07/12/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
66	07/12/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			

65	04/20/2006	MAIL SUPPLEMENTAL RESTRICTION / ELECTION REQUIREMENT			
64	04/20/2006	MAIL EXAMINER INTERVIEW SUMMARY (PTOL - 413)			
63	04/17/2006	EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)			
62	04/17/2006	SUPPLEMENTAL RESTRICTION			
59	03/09/2006	REQUEST FOR EXTENSION OF TIME - GRANTED			
58	02/10/2006	MAIL RESTRICTION REQUIREMENT	459		-1
57	02/06/2006	REQUIREMENT FOR RESTRICTION / ELECTION			
56	01/30/2006	CASE DOCKETED TO EXAMINER IN GAU			
55	01/04/2006	REFERENCE CAPTURE ON IDS			
54.7	01/04/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
54	01/04/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
53	08/31/2005	REFERENCE CAPTURE ON IDS			
52.7	08/31/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
52	08/31/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
50	08/31/2005	MISCELLANEOUS INCOMING LETTER			
49	08/19/2005	PRELIMINARY AMENDMENT			
48	07/11/2005	NEW OR ADDITIONAL DRAWING FILED			
47	01/04/2005	REFERENCE CAPTURE ON IDS			
46	11/09/2004	REFERENCE CAPTURE ON IDS			
45	07/11/2005	CRF DISK HAS BEEN RECEIVED BY PREEXAM / GROUP / PCT			
44	07/11/2005	PRELIMINARY AMENDMENT			
43	04/29/2004	PRELIMINARY AMENDMENT			
42	04/08/2004	PRELIMINARY AMENDMENT			
41	02/19/2004	PRELIMINARY AMENDMENT			
40	07/21/2005	ERROR(S) IN CRF CORRECTED BY STIC			
39.7	01/20/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
39	01/20/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
38.7	01/04/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			

38	01/04/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
37.7	11/09/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
37	11/09/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
36	07/02/2004	MAIL MISCELLANEOUS COMMUNICATION TO APPLICANT			
35	07/01/2004	MISCELLANEOUS COMMUNICATION TO APPLICANT - NO ACTION COUNT			
34	06/24/2004	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
33	06/24/2004	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
32	06/24/2004	MAIL NON-COMPLIANT PRELIMINARY AMENDMENT			
31	06/24/2004	NON-COMPLIANT PRELIMINARY AMENDMENT			
30	04/08/2004	PRELIMINARY AMENDMENT			
29	06/24/2004	CORRESPONDENCE ADDRESS CHANGE			
28	06/24/2004	CASE DOCKETED TO EXAMINER IN GAU			
27	04/29/2004	PRELIMINARY AMENDMENT			
26	04/29/2004	WORKFLOW INCOMING AMENDMENT IFW			
25	04/08/2004	WORKFLOW INCOMING AMENDMENT IFW			
24	03/30/2004	APPLICATION RETURN FROM OIPE			
23	03/30/2004	APPLICATION IS NOW COMPLETE			
22	03/30/2004	APPLICATION RETURN TO OIPE			
21	03/30/2004	APPLICATION DISPATCHED FROM OIPE			
20	03/30/2004	APPLICATION IS NOW COMPLETE			
19	02/03/2004	CRF DISK HAS BEEN RECEIVED BY PREEXAM / GROUP / PCT			
18	03/08/2004	PRE-EXAM OFFICE ACTION WITHDRAWN			
17	03/27/2004	REFERENCE CAPTURE ON IDS			
16.7	01/14/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
16	01/14/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
15.7	01/09/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
15	01/09/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
14	03/08/2004	SEQUENCE ERRORS			

13	02/03/2004	ADDITIONAL APPLICATION FILING FEES			
12	02/03/2004	A STATEMENT BY ONE OR MORE INVENTORS SATISFYING THE REQUIREMENT UNDER 35 USC 115, OATH OF THE APPLIC			
11	02/03/2004	APPLICANT HAS SUBMITTED NEW DRAWINGS TO CORRECT CORRECTED PAPERS PROBLEMS			
10	03/05/2004	CRF IS GOOD TECHNICALLY / ENTERED INTO DATABASE			
9	12/03/2003	NOTICE MAILED--APPLICATION INCOMPLETE--FILING DATE ASSIGNED			
7	09/08/2003	CRF DISK HAS BEEN RECEIVED BY PREEXAM / GROUP / PCT			
6	11/19/2003	CASE CLASSIFIED BY OIPE			
5	11/19/2003	CLEARED BY OIPE CSR			
4	10/15/2003	IFW SCAN & PACR AUTO SECURITY REVIEW			
3	09/26/2003	CRF IS FLAWED TECHNICALLY / NOT ENTERED INTO DATABASE			
2	09/08/2003	CRF DISK HAS BEEN RECEIVED BY PREEXAM / GROUP / PCT			
1	09/08/2003	INITIAL EXAM TEAM NN			

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EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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